

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 105 of 2000

in

SPECIAL CIVIL APPLICATION No 1200 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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PADMABEN WD/O HARIVADAN

PRANLAL THAKORE

Versus

JAYANTIBHAI PRANLAL THAKORE  
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Appearance:

MR PV NANAVATI for Appellant

MR MC BHATT for Respondents Nos. 1 & 2

MR PRASHANT G DESAI for Respondent No. 8

No one has appeared on behalf of other respondents despite service.  
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CORAM : MR.JUSTICE M.R.CALLA

and

Date of decision: 19/07/2000

ORAL JUDGEMENT (Per: M.R.Callan,J)

1. This Letters Patent Appeal is directed against the judgment and order dated 1.3.2000 passed by the learned single Judge in Special Civil Application No.1200/00 whereby the Special Civil Application was rejected and the notice was discharged. The dispute between the parties relates to a property in the Swastik Co-operative Housing Society, Plot No.102 out of Final Plot No.232 of village Navrangpura, Ahmedabad, Town Planning Scheme No.3 in the said Society. The Society is a Co-operative Housing Society. Originally the property stood in the name of Vijay Gauri, wife of Shri Pranlal Thakore. Shri Pranlal Thakore and his wife Vijay Gauri had four sons, namely, Rajendrabhai, Mahendrabhai, Harivadanbhai and Jayantibhai. After the death of said Shri Pranlal Thakore, his wife Vijay Gauri had moved an Application to the said Society that her name may be deleted from the Membership of the Society and in her place the names of her four sons, namely, Rajendrabhai, Mahendrabhai, Harivadanbhai and Jayantibhai be included as the Members of the Society. It has been submitted by Mr. Nanavati that later on Jayantibhai relinquished his rights and had also accepted Rs.12,000/- in consideration thereof. This happened in October 1963 at a point of time when Jayantibhai's son, namely, Shameer was a minor. On 14.8.73 the three brothers i.e. Rajendrabhai, Mahendrabhai and Harivadanbhai made an arrangement alongwith their nephew, namely, Shameer i.e. son of Jayantibhai with regard to the property in question. In December, 1990 a document with regard to the arrangement of the said property between the three brothers, their nephew - Shameer i.e. son of Jayantibhai as also Jayantibhai was made. The case of the present appellant i.e. Padmaben, wife of one of the three brothers Harivadan, who died in 1993, is that her husband Harivadan had not agreed to this arrangement and did not sign it in December 1990 and, therefore, on the basis of this document, which is also alleged to be unregistered, there is no question of any interest of Jayantibhai or his son Shameer in this property.

2. Dr.Jayantibhai and his son Shameer then moved an Application before the Society for inclusion of their names as co-members. The Society refused. They, therefore, moved District Registrar for inclusion of their names as co-members and the District Registrar passed an order on 18.10.99 in their favour including

their names as co-members with regard to the said property of the Society. Against this order dated 18.10.99, the appellant herein i.e. Padmaben, wife of Harivadan has filed the present Special Civil Application No.1200 of 2000. The same has been rejected by the learned single Judge by judgment and order dated 1.3.2000 and aggrieved from the same order, the present Letters Patent Appeal has been filed by her.

3. Having heard learned counsel and having gone through the documents, which are on record, and the order passed by the learned single Judge, we find that the view taken by the learned single Judge does not warrant any interference whatsoever in the facts of the present case. For the reasons stated in Para 4 of the order passed by the learned single Judge, we are satisfied that by the order dated 18.10.99, as has been passed by the District Registrar, no civil right of the present appellant in the property in question is effected in any manner. Even if it is taken that the District Registrar is a Court of limited jurisdiction and not a court of plenary jurisdiction, any order passed by the District Registrar cannot be decisive or conclusive of the civil rights of the parties with regard to the ownership of the property in question. The District Registrar has decided the question as to whether the respondents should have been included as co-members with regard to the said property in dispute or not? We agree with the learned single Judge that such rights cannot be finally adjudicated by the District Registrar and the property rights of the parties inter se can be finally decided only by the Civil Court. The grievance raised by the present appellant that the appellant and other likely effected parties were not heard by the District Registrar and were not parties in the proceedings before the District Registrar and, therefore, the order must be set aside does not impress us for the simple reason that the said order passed by the District Registrar cannot be said to be an order against the rights of any of the parties i.e. either the appellant or other relatives and since this order does not finally determine anything against the appellant and other relatives, he, as a Court of limited jurisdiction, if has allowed the respondents Nos.1 and 2 to be co-members, the order cannot be said to be an order to the prejudice of the present appellant, more particularly when it is very clear from the facts of this case and it has been stated even before us by Mr.M.C.Bhatt appearing on behalf of respondents Nos.1 and 2 that so far as the share and claim of the present appellant Padmaben, as a widow of Harivadan, as could be claimed by her, remains intact and her such claim is not at all disputed by them

i.e. 1/4th share. Therefore, if the brothers other than Harivadan had entered into any agreement so as to give any benefit in the property to Jayantibhai and his son Shameer out of their share in the property, the present appellant cannot have any legitimate grievance so long as her due share remains protected and undisputed. In any case, the basic impugned order dated 18.10.99 does not impinge upon the civil rights nor it can confer any civil right as such in favour of any party so as to be determinative or conclusive and if at all any such question arises, ultimately it will be decided by the Civil Court and, therefore, the learned single Judge has rightly rejected the Special Civil Application, which was filed against the order dated 18.10.99. This order dt.18.10.99 only gives co-membership of the Society to the respondents in respect of the property in question.

4. We do not find any force in this Appeal. The same is hereby dismissed. Notice is hereby discharged. No order as to costs.

(M.R.Callan,J)

(R.R.Tripathi,J)